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14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

16 Steven Trunk,

17 Plaintiff,

18 vs.

19 First Associates Loan Servicing, LLC dba
20 Peaks Private Student Loan Customer
21 Service

22 Defendant.

Case No.: '15CV468 W KSC

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

**1. THE TELEPHONE CONSUMER
PROTECTION ACT; AND
2. THE ROSENTHAL FAIR DEBT
COLLECTION PRACTICES ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Steve Trunk (hereafter “Plaintiff”), by undersigned counsel, brings the
2 following complaint against First Associates Loan Servicing, LLC dba Peaks Private
3 Student Loan Customer Service (hereafter “Defendant”) and alleges as follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), and repeated
8 violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788,
9 *et seq.* (“Rosenthal Act”).
10

11 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3), Cal. Civ.
12 Code 1788.30(f), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
13

14 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
15 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
16 where Defendant transacts business in this district.
17

18 **PARTIES**

19 4. Plaintiff is an adult individual residing in San Diego, California, and is a
20 “person” as defined by 47 U.S.C. § 153(39) and Cal Civ. Code § 1788.2(g).
21

22 5. Defendant is a business entity located in San Diego, California, and is a
23 “person” as defined by 47 U.S.C. § 153(39) and Cal Civ. Code § 1788.2(g).
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1 6. Defendant, in the ordinary course of business, regularly, on behalf of
2 itself or others, engages in the collection of consumer debts, and is a “debt collector”
3
4 as defined by Cal. Civ. Code § 1788.2(c).

5
6 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

7 7. Upon information and belief, a financial obligation was allegedly
8 incurred by a person who is not a party to this lawsuit (hereafter “Debtor”).

9 8. Plaintiff is not the Debtor, has no location information regarding the
10 Debtor, and has no responsibility for repayment of Debtor’s debt.

11
12 9. Debtor’s alleged obligation arises from a transaction in which property,
13 services or money was acquired on credit primarily for personal, family or household
14 purposes and is a “consumer debt” as defined by Cal. Civ. Code § 1788.2(f).

15
16 10. At all times mentioned herein where Defendant communicated with any
17 person via telephone, such communication was done via Defendant’s agent,
18 representative or employee.

19
20 11. At all times mentioned herein, Plaintiff utilized a cellular telephone
21 service and was assigned the following telephone number: 619-XXX-3814 (hereafter
22 “Number”).

23
24 12. Defendant placed calls to Plaintiff’s Number in an attempt to collect a
25 debt.
26
27
28

1 13. The aforementioned calls were placed using an automatic telephone
2 dialing system (“ATDS”) and/or by using an artificial prerecorded voice
3 (“Robocalls”).
4

5 14. When Plaintiff answered the calls from Defendant, he was met with a
6 prerecorded voice directing him to press one (1) if he was the Debtor.
7

8 15. Plaintiff never provided his phone number to Defendant and never
9 provided his consent to be called by Defendant.
10

11 16. Plaintiff returned Defendant’s calls and explained that the Debtor was
12 unknown to him and unreachable at his number.

13 17. Plaintiff demanded Defendant cease all calls to his Number.
14

15 18. Nevertheless, Defendant continued calling Plaintiff using an ATDS
16 and/or Robocalls in its attempt to reach the Debtor.
17

18 **COUNT I**

19 **VIOLATIONS OF THE TCPA , 47 U.S.C. § 227, et seq.**

20 19. Plaintiff incorporates by reference all of the above paragraphs of this
21 complaint as though fully stated herein.
22

23 20. The TCPA prohibits Defendant from using, other than for emergency
24 purposes, an ATDS and/or Robocalls when calling Plaintiff’s Number absent
25 Plaintiff’s prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).
26
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28

1 21. Defendant's telephone system has the earmark of using an ATDS and/or
2 using Robocalls in that Plaintiff, upon answering calls from Defendant, heard a
3
4 prerecorded voice indicating it was attempting to reach a person other than Plaintiff.

5 22. Defendant called Plaintiff's Number using an ATDS and/or Robocalls
6 without Plaintiff's consent in that Defendant either never had Plaintiff's prior express
7
8 consent to do so or such consent was effectively revoked when Plaintiff requested that
9 Defendant cease all further calls.

10 23. Defendant continued to willfully call Plaintiff's Number using an ATDS
11 and/or Robocalls knowing that it lacked the requisite consent to do so in violation of
12 the TCPA.
13

14 24. Plaintiff was harmed and suffered damages as a result of Defendant's
15 actions.
16

17 25. The TCPA creates a private right of action against persons who violate
18 the Act. *See* 47 U.S.C. § 227(b)(3).
19

20 26. As a result of each call made in violation of the TCPA, Plaintiff is
21 entitled to an award of \$500.00 in statutory damages.
22

23 27. As a result of each call made knowingly and/or willingly in violation of
24 the TCPA, Plaintiff may be entitled to an award of treble damages.
25
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28

COUNT II
VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 et seq.

28. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

29. The Rosenthal Act was passed to prohibit debt collectors from engaging in unfair and deceptive acts and practices in the collection of consumer debts.

30. Defendant caused Plaintiff's telephone to ring repeatedly or continuously to annoy Plaintiff, in violation of Cal. Civ. Code § 1788.11(d).

31. Defendant communicated with Plaintiff with such frequency as to be unreasonable, constituting harassment, in violation of Cal. Civ. Code § 1788.11(e).

32. Plaintiff was harmed and is entitled to damages as a result of Defendant's violations.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);

B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);

C. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);

1 D. Statutory damages of \$1,000.00 for knowingly and willfully committing
2 violations pursuant to Cal. Civ. Code § 1788.30(b);

3
4 E. Costs of litigation and reasonable attorneys' fees pursuant to Cal. Civ.
5 Code § 1788.30(c);

6 F. Punitive damages; and

7
8 G. Such other and further relief as may be just and proper.

9
10 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

11
12 DATED: March 3, 2015

TAMMY HUSSIN

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14 By: /s/ Trinette G. Kent
15 Trinette G. Kent, Esq.
16 Lemberg Law, LLC
17 Attorney for Plaintiff, Steven Trunk
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